

APPEAL NO. 042569
FILED NOVEMBER 3, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on September 22, 2004. The hearing officer decided that the compensable injury sustained on _____, does include bilateral chondromalacia, but does not include the lumbar spine, and that the appellant/cross-respondent (claimant) did not have disability resulting from an injury sustained on _____, beginning May 17, 2004, and continuing through the date of the CCH. The claimant has appealed on sufficiency grounds the finding that the compensable injury did not include the lumbar spine, and that he did not have disability. The respondent/cross-appellant (carrier) has responded and cross-appealed, urging affirmance of the disability and extent-of-injury to the lumbar spine determinations, and asserting that the chondromalacia is not part of the compensable injury.

DECISION

Affirmed.

The hearing officer did not err in her extent-of-injury and disability determinations. The claimant had the burden of proof on these issues and they presented questions of fact for the hearing officer. There was conflicting evidence presented on the disputed issues. The 1989 Act makes the hearing officer the sole judge of the weight and credibility to be given to the evidence. Section 410.165(a). As such, the hearing officer was required to resolve the conflicts and inconsistencies in the evidence and to determine what facts the evidence established. In this instance, the hearing officer was not persuaded that the claimant sustained his burden of proving the compensable injury included the lumbar spine; or that he had disability resulting from an injury beginning May 17, 2004, and continuing through the date of the CCH. She noted that Dr. B indicated that the injury aggravated preexisting conditions resulting in the chondromalacia. The hearing officer was acting within her province as the finder of fact in so finding. Nothing in our review of the record reveals that the challenged determinations are so contrary to the overwhelming weight of the evidence as to be clearly wrong or unjust. Thus, no sound basis exists for us to disturb that determination on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**SUPERINTENDENT
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Veronica L. Ruberto
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Thomas A. Knapp
Appeals Judge